

CONTRACT #9
RFS # 359.61-005

**Department of Children's
Services**

VENDOR:
John L. Wilhoit, DDS

REQUEST: NON-COMPETITIVE CONTRACT

RECEIVED

JUN 01 2006

FISCAL REVIEW

APPROVED

Commissioner of Finance & Administration
Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required.
A request cannot be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	359.61-005	
2) State Agency Name:	Department of Children's Services	
3) Service Caption:	Dental Services at Taft Youth Development Center	
4) Proposed Contractor:	John L. Wilhoit, DDS	
5) Contract Start Date: (attached explanation required if date is < 60 days after F&A receipt)	July 1, 2006	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	June 30, 2011	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$250,000.00	
8) Approval Criteria: (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :	This Non-Competitive request is to secure Dental Services at Taft Youth Development Center, Pikeville, Bledsoe County, TN.	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service:	The Department of Children's Services is required to provide Dental Services to students at Taft Youth Development Center because the students are in the custody of the State of Tennessee. Dental Services are also needed as a part of the classification process and health maintenance.	
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used:	The procuring agency bought the service in the past via Request for Proposal method.	
12) Name & Address of the Proposed Contractor's Principal Owner(s): (not required if proposed contractor is a state education institution)	John L. Wilhoit, DDS, P.O. Box 446, Pikeville, TN 37367	
13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service:	The contractor has been a licensed Dentist since 1974. He has provided Dental Services to the Taft Youth Development Center for over 15 years.	

14) Documentation of Office for Information Resources Endorsement:
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement:
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

16) Documentation of State Architect Endorsement:
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives:

An RFP was issued for Dental Services at Taft Youth Development Center in Pikeville, Bledsoe County, TN on March 15, 2006. The RFP notice was sent to 30 potential vendors within a 55-mile radius of Bledsoe County (see attachment). The current vendor John L. Wilhoit, DDS was the sole proposer.

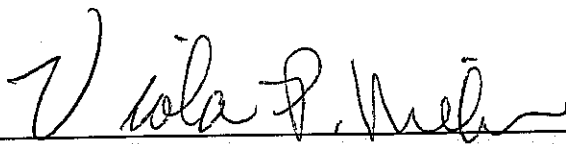
18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process:
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

Although John Wilhoit was the sole proposer, he submitted a proposal that required DCS to reject it. The submitted proposal lacked some of the pertinent information requested, instructions were not followed and the Cost Proposal was submitted with the Technical Proposal. The state needs to use non-competitive negotiation for the following reasons:

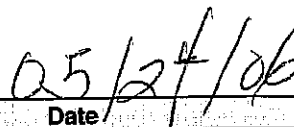
1. A competitive process was completed but there were no interested vendors other than John L. Wilhoit, DDS.
2. Since the competitive process didn't produce a variety of interested vendors, a non-competitive process would ensure the continuation of services for students at Taft Youth Development Center.
3. The location and clientele to be served make it difficult to find vendors willing to provide services.
4. The current vendor, John L. Wilhoit, DDS, has a proven track record with the facility and is willing to continue services.

REQUESTING AGENCY HEAD SIGNATURE & DATE:

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR—signature by an authorized signatory will be accepted only in documented exigent circumstances)



Agency Head Signature

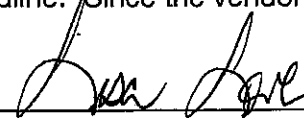


Date

RFP 359.61-005
Taft Youth Development Center

Explanation for Non-Competitive request being submitted in less than 60 days:

This Non-Competitive request was submitted in less than 60 days due to the RFP schedule and a written agreement with the winning vendor. The vendor did not have a physician to provide the services when the RFP was submitted. The written agreement allowed the vendor to find a physician by an agreed upon deadline. Since the vendor didn't provide a physician, the award was retracted.


Lisa Love, Procurement Coordinator

Vendor List

Robert E Brooksbank
Regional Oral Surgery Center PC
33 West Third St
Cookeville, TN 38501

John Courtney, Business Manager
Michael Edenfield, DDS, PC
P.O. Box 4886
Virginia Beach, VA 23454

Sheri Pendergrass
Bledsoe County Executive
104 N. Frazier St
Pikeville, TN 37367

John H. Wilhoit
P.O. Box 446
Pikeville, TN 37367

Norma Peal
First Correctional Medical, Inc.
6861 North Oracle Road
Tucson, AR 85704

Donald Bethea
427 N. Willow Ave. Ste.2
Cookeville, TN 38501

Kent Bewick
241 Northgate Dr. Ste. 2
McMinnville, TN 37110

Greg Boston
124 S. Main St
Sparta, TN 38583

Pamela Cain
5655 Peavine Rd
Crossville, TN 38571

Connie Nicholson
125 Brown Ave
Crossville, TN 38555

Marilyn Poteete Langford
122 South Main St
Sparta, TN 38583

Ellen Standifer
5999 Shallowford Rd
Chattanooga, TN 37421

Nyla G. Cross
815 Webb Ave
Crossville, TN 38555

Waymon T. Haston
521 Ben Lomand Dr
Sparta, TN 38583

Ronald Jessup
303 N. Court St
Sunbright, TN 37872

Koletar Peter
3121 N. Main St
Crossville, TN 38555

Hickory Creek Dental Arts PC
268 S. Chancery St
McMinnville, TN 37110

J S Smith
11863 McMinnville Hwy
Walling, TN 38587

Hugh Thompson
111 Upperman Lane
Baxter, TN 38544

Norman Sain
126 Hobson St
McMinnville, TN 37110

James Smith
200 Shipley St
Cookeville, TN 38501

Joseph Brogdon
3920 Dayton Blvd
Chattanooga, TN 37415

James Chapman
224 Old Mill Rd
Wartburg, TN 37887

Big Spring Dental
2200 Big Spring Rd
McMinnville, TN 37110

Jerald Bryant
220 N. Washington Ave
Cookeville, TN 38501

William Teppenpaw
4841 Hixson Pike
Hixson, TN 37343

Larry Millinax
6012-A Hixson Pike
Hixson, TN 37343

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF CHILDREN'S SERVICES
AND
JOHN L. WILHOIT III, DDS**

This Contract, by and between the State of Tennessee, Department of Children's Services (DCS), "Contractor", is for the provision of Dental Services at Taft Youth Development Center (TYDC) in Pikeville, TN, as further defined in the "SCOPE OF SERVICES".

The Contractor is an individual. The Contractor's address is:

110 South Main Street
Pikeville, TN 37367

The Contractor's place of incorporation or organization is Tennessee.

A. SCOPE OF SERVICES:

Dental Services shall be defined as services provided by the following professionals within their Regulated Scope of Practice in accordance with the Tennessee Board of Dentistry:

- Licensed Dentist
- Licensed Dental Hygienist
- Registered Dental Assistant
- Practical Dental Assistant

A.1. Treatment duties of the Contractor shall include, but are not limited to the following:

A.1.a. Perform extractions as necessary

A.1.b. Treat impactions when possible

A.1.c. Palative Periodontics

A.1.d. Restorative procedures, including silver amalgam, composite fillings, and treatment fillings.

A.1.e. Perform non-elective dental surgical procedures.

A.1.f. Routine prophylaxis PRN

A.1.g. Perform bi-yearly examinations and prophylaxis on all students, including new admissions.

A.1.h. Perform student assessments within seven (7) working days of their admission to Taft Youth Development Center.

A.1.i. Provide prosthetic devices as needed to include full and partial dentures

A.2. Contractor shall maintain a daily log of patients seen and document each visit in the student's health record.

- A.3. Contractor shall supervise and provide the services of a dental hygienist or dental assistant.
- A.4. Contractor shall account for and be responsible for all dental tools. This shall include adhering to institutional tool control rules and policies as well as insuring proper cleaning and sanitation.
- A.5. Contractor shall travel to and provide all services at Taft Youth Development Center.
- A.6. Dental services shall be provided for approximately eight (8) hours per week.
- A.7. The Contractor shall be a Dentist licensed in the State of Tennessee.
- A.8. The Contractor shall comply with all applicable Tennessee Department of Children's Services policies and procedures including those related to dental services and specialties and security regulations.
- A.9. The State shall provide workspace, dental equipment and supplies to the Contractor.
- A.10. The Contractor shall invoice DCS monthly for services provided. Such invoices shall be submitted to DCS not later than thirty (30) days after the end of the month in which service was rendered.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2006 and ending on June 30, 2011. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Two Hundred Fifty Thousand Dollars (\$250,000.00). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Payment Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein for units of service authorized by the State in a total amount not to exceed

the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Payment Rates:

<u>SERVICE</u>	<u>RATE PER HOUR</u>				
	Year 1	Year 2	Year 3	Year 4	Year 5
Dentist Services	\$105.00	\$105.00	\$105.00	\$105.00	\$105.00

The Contractor shall not be compensated for travel time to the primary location of service provision.

The Contractor shall submit monthly invoices, Attachment A, for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced

- C.3.a. If the Contractor fails to comply with the provisions of Section A.10. of the Scope of Services, the Contractor shall forfeit payment for those services.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form". This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Don Murray, CSM Administration
Taft Youth Development Center
900 State Route 301
Pikeville, TN 37367
Phone: 423-881-3201
Fax: 423-881-4617
E-Mail: Donald.Murray@state.tn.us

The Contractor:

John L. Wilhoit III, DDS
110 South Main Street
P.O. Box 446
Pikeville, TN 37367
Phone: 423-447-2421
Fax: 423-447-3408

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

- E.5. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.6. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.

- E.7. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

- E.8. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's

information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.9. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.10. Public Accountability. If this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor agrees to display a sign stating:
- "NOTICE: This Contractor is a recipient of taxpayer funding. if you observe an employee engaging in any activity which you consider to be illegal or improper, please call the State Comptroller's toll free hotline: 1-800-232-5454"
- Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public passes to receive State funded services.
- E.11. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.12. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device

containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

- E.13. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.14. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to **Tennessee Code Annotated**, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

- E.15. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

- E.16. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F.

IN WITNESS WHEREOF:

JOHN L. WILHOIT III, DDS:

John L. Wilhoit III, DDS

Date

DEPARTMENT OF CHILDREN'S SERVICES:

Viola P. Miller, Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

DEPARTMENT OF PERSONNEL:

Nat E. Johnson, Acting Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date

ATTACHMENT A



STATE OF TENNESSEE
DEPARTMENT OF CHILDREN'S SERVICES
Cordell Hall Building, 8th Floor
436 Sixth Avenue North
Nashville, Tennessee 37243-1290

FEE-FOR-SERVICE INVOICE
CONTRACTOR INVOICE NUMBER _____

Contractor Name:
Remittance Address:
City, State, Zip Code:
Program Type:
Contract Period:

Contract Number:
Contractor Tax ID or SSN:
Phone Number:
Cell Phone:
Fax Number:
E-mail Address:

CCC

[illegible]

AUTHORIZATION:

DCS SIGNATURE AUTHORIZATION DATE PHONE #

CSA SIGNATURE AUTHORIZATION

DATE

PHONE # ()

CONTRACTOR SIGNATURE:

CONTRACTOR SIGNATURE _____ **DATE** _____ **PHONE #** _____

PRINT NAME OF SIGNED

I hereby certify, to the best of my knowledge, the accuracy of the information provided in this invoice, that the amounts billed have not been previously requested and are in accordance with the contract terms and conditions.

DCS FISCAL USE ONLY TC MOD

ALLOT	FD	AGOBJ
CC	OBJ	
DV/NO.	REF	FTY
DUE	DESC	